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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/527,767	
	Filing Date	03/17/2000	
	First Named Inventor	Wolfgang Kreiss	
	Group Art Unit	1641	
	Examiner Name	Gailene Gabel	
Total Number of Pages in This Submission	4	Attorney Docket Number	Le A 33 072

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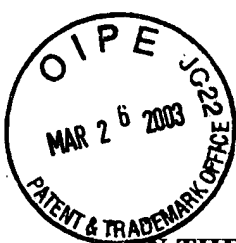
## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	William F. Gray Reg. No.: 31,018	Bayer Pharmaceuticals Corporation 400 Morgan Lane West Haven, CT 06516
Signature	<i>William F. Gray</i>	
Date	14 March 2003	

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Attorney Docket No. Le A 33 072

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant(s): Kreiss, et al.

Group Art Unit: 1641

Serial No: 09/527,767

Examiner: Gailene Gabel

Filed: 03/17/2000

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For: Diffusion-Controlling Sensor Layer

**CERTIFICATION OF MAILING UNDER 37 C.F.R. 1.8(a)**

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Date: MAR 18 2003

  
Beatriz Alviz

**RESPONSE TO EXAMINER'S COMMUNICATION**

**Assistant Commissioner for Patents**

**Washington, DC 20231**

Sir:

This response is deemed not to require any extension of time, but if an extension of time is required, it is hereby requested, and authorization is given to charge deposit account 13-3372 for whatever fee is required.

This is in response to the communication from the Office dated 01/15/2003, in which the examiner asserts that the reply filed in the above-identified application on 10/7/02 (mailed under a certificate of first class mail on 30 September 2002) is not fully responsive to the prior office action. The examiner has refused to enter new claims 27-44.

Applicants maintain that the response dated September 30, 2002 was fully responsive to the prior office action, and request that claims 27-44 be entered and that prosecution proceed.

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In the restriction requirement dated 09/28/01 Examiner Gabel required restriction between Group I (claims 1-11, and 25-26, drawn to apparatus having a specialized sensor layer) and Group II (claims 12-24 drawn to a method for detecting biological effects of substances). In response to this restriction requirement, attorney Jerrie Chiu elected to proceed with prosecution of the claims of Group I, (claims 1-11 and 25-26).

The examiner will note that claims 25-26 dealt with apparatus for detecting the biological effect of substances. Claim 25 recited apparatus consisting of a sensor layer according to claim 1 which is in contact with the sample to be assayed, and of an imaging system in whose detection zone a part or the whole of the sensor layer is located. Claim 26 recited that the sensors in the sensor layer indicate their activity by emission or quenching of the emission of light, and that the imaging system detects this emission of light. Claim 1 dealt with a sensor layer, extremely broadly defined. Claims 2-11 claimed details of this sensor layer.

In the official action dated 3/28/02 the examiner devoted 4 paragraphs to elaborating the reasons why claim 25 was rejected under §112, second paragraph. In their response, the applicants addressed the examiner's concerns by canceling claim 25 and writing new claim 27, which the applicants believe overcomes the rejection. In new claim 27, elements a) and b) correspond to the sensor layer of original claim 1, further elaborated with respect to the matrix, and element c) corresponds to the imaging system recited in claim 25. Thus, new claim 27 corresponds to original claim 25 with revisions made to address the examiner's rejection of claim 25. The subject matter of original claim 26 is now in new claim 44. Details of the system recited in new claim 27 are provided in new claims 28-43.

In the present official action, the examiner asserts that the previously claimed invention is drawn to a sensor layer. She further asserts that the amendment made in the previous response does not encompass the previously claimed invention because the newly submitted claims are drawn to a system which only includes the sensor layer. The examiner states that the applicant is advised to delimit the claims to the sensor layer since it is currently under prosecution, and states that the applicant is requested to note that a claimed invention may not be changed at mid-stream while under prosecution.

The examiner is mistaken. As explained above, the invention being prosecuted relates to both detection apparatus and a sensor layer of a diffusion controlling matrix for use in the claimed apparatus. The examiner has overlooked the presence of claims 25 and 26 in restriction Group I and in the prior prosecution (including her own office action). Applicants decline to "delimit the claims to the sensor layer" only, since both the apparatus and the sensor layer are currently under prosecution. Applicants deny that they are changing the claimed invention at mid-stream as asserted by the examiner.

In formulating their response to the prior office action, the applicants decided to forego an independent claim to the sensor layer per se, focusing instead on claims to apparatus including the sensor layer, and also including sufficient detail and limitations to avoid the prior art. The sensor layer is now claimed in dependent claims referring to the apparatus. The present claims are within the previously required restriction Group I, which was elected for further prosecution, and are deemed to be fully supported by the original text, drawings, and claims.

The examiner is requested to withdraw her holding that the previous amendment is non-responsive, and proceed with prosecution of new claims 27-44.

Respectfully submitted,



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